

**A LEGAL ANALYSIS OF PARENTAL CHILD ABDUCTION IN
MALAYSIA AFTER THE HAGUE CONVENTION ON THE
CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**



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NOVEMBER 2012

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Surat Kami : 600-RMI/SSP/DANA 5/3/Dsp (70/2011)
Tarikh : >8Februari2011

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Λ u r o Λ e ,
A legal Analysis of Parental Child Abduction In Malaysia After the Hague
Convention on the Civil Aspects of International Child Abduction
Kod Projek : 600-RMI/SSP/DANA 5/3/Dsp (70/2011)
Kategori Projek : Kategori F {2011}
Tempoh : 01 Februari 2011 - 31 Januari 2012 (12 buian)
Jumlah Peruntukan : RM 5,000.00
Ketua Projek : Pn Rohayati Hussin

Dengan hormatnya perkara di atas adalah dirujuk.

2. Sukacita dimaklumkan pihak Universiti tefah meluluskan cadangan penyelidikan Y. Brs Prof./tuan/puan untuk membiayai projek penyelidikan di bawah Dana Kecemerlangan UiTM.

3. Bagi pihak Universiti kami mengucapkan tahniab kepada Y. Brs Prof./tuan/puan kerana kejayaan ini dan seterusnya diharapkan berjaya menyiapkan projek *ml dengan* cemerlang.

4. Peruntukan kewangan akan disalurkan melalui tiga (3) peringkat berdasarkan kepada laporan kemajuan serta kewangan yang mencapai perbelanjaan lebih kurang 50% dari peruntukan yang diterima.

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5. Untuk tujuan mengemaskini pihak Y. Brs. *ProfMmnipnan* adalah diminta untuk melengkapkan semula kertas cadangan penyelidikan sekiranya perlu, mengisi borang setuju tenma projek penyelidikan *rian* menyusun perancangan semula bajet yang baru seperti yang diluluskan. Sila lihat lampiran bagi tatacara tambahan untuk pengurusan projek.

Sekian, harap maklum.

"SELAMAT MENJALANKAN PENYELIDIKAN DENGAN JAYANYA"

Yang benar


DR. OSKAR HASDINOR HASSAN
Ketua Penyelidikan (Sains Sosial dan Pengurusan)

5.2 Enhanced Executive Summary

Globalisation has exposed people to interact between nationalities of different states. Marriage of cross-nationality is not a new phenomenon and it becomes more common now. However, when such marriage fails, a losing parent in custody may be tempted to abduct their children to his or her own country. The removal of children by unlawful parent to another jurisdiction is not a new trend in Malaysia as it has gained greater importance following the highly exposed case involving Raja Bahrin and his children. The Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction came into force on December 1, 1983. The Hague Convention aims to protect children from unlawful removal from their respective countries and to establish procedures to ensure the children's prompt return to the State of their habitual residence, as well as to secure protection for rights of access for respective parents. Malaysia has not acceded to the Hague Convention, unlike 82 countries worldwide and as such the question arises as to the legal position of the respective parents in cases of parental child abduction. Therefore, this study will focus on the aims and objectives of the Hague Convention on the Civil Aspect of International Child Abduction. Besides, this study will seek to examine the practices and relevant provisions in Malaysia in dealing with the issue of parental child abduction. At the end of the discussion, a recommendation will be made whether Malaysia should accede to the Hague Convention and to suggest any best solutions to curb this issue.

5.3 Introduction

Globalisation makes possible for mixed marriage between individuals of different nationalities and from different cultural backgrounds. This kind of marriage creates opportunities and risks at the same time. When this marriage break downs, custody right is given to one parent and the 'losing parent' may be tempted to abduct the children and flee the jurisdiction. Parental child abduction is a frequent incidence and notorious in today's world. It was not until 1984 when the House of Lords in the case of *Regina v D [1984] 1 AC 778* held the offence of kidnapping may be committed by the parent of the child. One solution to this problem is to use the Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction which came into force on December 1, 1983 to recover and return the child to his or her custodial parent (Chaikin, 1993).

As of now, 82 countries have ratified the said convention but most muslim countries are not included. Ratification of the Hague Convention implies an acceptance by States of certain important international principles addressing the protection of children. Malaysia is one of the muslim states which fails to ratify the Hague Convention. As a result, the issue of parental child abduction fails to be settled using the said convention. Besides, there is no specific law in dealing with the issue of parental child abduction in Malaysia. Hence, when the case happens in Malaysia, the unsatisfied parent could not use the convention to seek the protection of the children. In the case of *State Central Authority v Ayob [1997] 21 Fam LR 567*, it illustrates the difficulty faced by a left- behind parent if a child is abducted to Malaysia. This means that the domestic laws of Malaysia will govern parental child abduction. However, the existing laws in Malaysia are inadequate to deal with this problem. Hence, the purposes of this study are to examine the aims and objectives of Hague Convention and to scrutinize the practices and applicable Malaysian laws in dealing with this issue.